

## Message Text

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ACTION ARA-14

INFO OCT-01 ISO-00 SCS-06 CA-01 L-03 H-01 HA-05 PA-01  
NSCE-00 SSO-00 CTME-00 /032 W  
-----001459 270225Z /14  
O 262313Z MAY 78  
FM AMEMBASSY MANAGUA  
TO SECSTATE WASHDC NIACT IMMEDIATE 6694

C O N F I D E N T I A L SECTION 01 OF 02 MANAGUA 2440

E.O. 11652: N/A

E.O. 11652 N/A

TAGS: CARR, PINT, SHUM, NU

SUBJECT: FURTHER DELAYS IN CHARITON CASE

REF: MANAGUA 2421

BEGIN SUMMARY: SOMOZA'S BANK HAS BROKEN OFF NEGOTIATIONS FOR A FINANCIAL SETTLEMENT OF THE CHARITON CASE APPARENTLY ON THE GROUNDS THAT THE AMOUNT CHARITON'S LAWYER OFFERED WOULD NOT JUSTIFY THE CRITICISM THAT THE GON AND THE BANK WOULD LIKELY RECEIVE FOR HAVING ARRANGED AN EXTRAJUDICIAL SETTLEMENT. RATHER, THE BANK INDICATED THAT IT WILL NOW ABANDON WHAT ITS PRESIDENT TACITLY ADMITTED WERE DELAYING TACTICS AND WILL, INSTEAD, PRESS FOR A SPEEDY TRIAL ON THE CRIMINAL CHARGES PENDING AGAINST CHARITON. THE BANK WOULD NOT PRESS TO KEEP CHARITON IN THE COUNTRY IF HE WERE FOUND INNOCENT, THE BANK'S PRESIDENT SAID. CHARITON AND HIS LAWYER, ON THE OTHER HAND, FEEL THAT THE BANK'S LATEST MOVE DEMONSTRATES THE ARBITRARY MANNER IN WHICH JUSTICE IS ADMINISTERED IN NICARAGUA. HIS ATTORNEY BELIEVES THAT A TRIAL WOULD TAKE AT LEAST TWO AND ONE-HALF MONTHS TO COMPLETE AND THAT ONE CANNOT BE CONFIDENT THAT A SOMOZA-APPROVED JURY WOULD DECIDE THE CASE ON ITS MERITS, I.E., FIND CHARITON, IN HIS VIEW, INNOCENT. END SUMMARY

1. BANCO DE CENTROAMERICA PRESIDENT OSCAR SEVILLA SACASA  
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CALLED ON AMBASSADOR MAY 26 TO SAY THAT THE BANK'S BOARD OF DIRECTORS HAVE DECIDED TO DISCONTINUE NEGOTIATIONS FOR A FINANCIAL SETTLEMENT AND TO LET NICARAGUA'S LEGAL PROCESS RUN ITS COURSE. SEVILLA EXPLAINED THAT, INASMUCH AS PRESIDENT SOMOZA IS A PARTNER IN THE BANK, A FINANCIAL SETTLEMENT SUCH AS CHARITON'S LAWYERS HAVE OFFERED (ABOUT \$85,000) WOULD NOT JUSTIFY THE ADVERSE PUBLICITY THAT

WOULD ACCRUE TO THE GON AND TO THE BANK FROM ARRANGING AN EXTRAJUDICIAL SOLUTION TO CHARITON'S PROBLEMS.

2. SEVILLA TACITLY ADMITTED THAT THE BANK HAS BEEN DELAYING THE JUDICIAL PROCESSING OF THE CRIMINAL CASE AGAINST CHARITON FOR FRAUD. HE SAID THAT THE BANK HAS NOW DECIDED TO INSTRUCT ITS LAWYERS TO SPEED UP THAT CASE AS QUICKLY AS POSSIBLE. SEVILLA ADDED THAT THE FIRST "TRASLADOS" HAVE BEEN COMPLETED, (I.E. THE FIRST ROUND OF STUDYING OF THE DOCUMENTS IN THE CASE BY THE LAWYERS HAS BEEN COMPLETED), AND THAT THE CASE CAN MOVE TO SIXTEEN-DAY PERIOD OF "PRUEBAS," (CALLING OF WITNESSES AND CROSS EXAMINATION). HE SAID THAT THE CASE WOULD THEN GO BEFORE A JURY WHICH WOULD DECIDE THE GUILT OR INNOCENCE OF CHARITON AND FIVE OTHER DEFENDANTS. SEVILLA OPINED THAT THE JURY WOULD PROBABLY FIND THE DEFENDANTS INNOCENT SINCE NICARAGUAN JURIES GENERALLY TEND TO SYMPATHIZE WITH INDIVIDUALS RATHER THAN INSTITUTIONS SUCH AS BANKS IN CASES OF THIS TYPE. ALL IN ALL, SEVILLA CONTINUED, CHARITON COULD BE FREED FROM THE CRIMINAL CHARGES WITHIN THREE WEEKS OR SO IF ALL THE LAWYERS ACTED SPEEDILY. HE SAID THE BANK'S LAWYERS WILL DO WHAT THEY CAN TO HASTEN THE LEGAL PROCESS AND HOPED THAT CHARITON'S AND THE OTHER FIVE DEFENDANTS' ATTORNEYS WOULD COOPERATE IN MOVING THE TRIAL AHEAD RAPIDLY.

3. SEVILLA SAID THAT, EVEN IF ACQUITTED OF THE CRIMINAL CHARGES, CHARITON WOULD STILL FACE A CIVIL SUIT FROM THE CONFIDENTIAL

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BANK. HOWEVER, THAT SUIT WOULD NOT PREVENT CHARITON FROM LEAVING THE COUNTRY AS SOON AS HE IS ACQUITTED. SEVILLA, NONETHELESS, HOPED THAT CHARITON WOULD AGREE TO PAY THE BANK AT LEAST SOME OF WHAT IT CLAIMS HE OWES IT.

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4. SEVILLA OPINED THAT THE CUSTOMS FINES AGAINST CHARITON WOULD BE DROPPED SINCE A CO-DEFENDANT IN THAT CASE, TEODORO PICADO, ALREADY HAD BEEN RELEASED AFTER SERVING 6 MONTHS.

5. EMBOFFS INFORMED IMMEDIATELY CHARITON'S LOCAL ATTORNEY, ZELAYA, OF BANK'S DECISION TO BREAK OFF NEGOTIATIONS AND TO PUSH FOR A SPEEDY TRIAL. ZELAYA SAID THAT SEVILLA'S STATEMENT THAT THE BANK IS FINALLY READY TO MOVE TOWARD A TRIAL SUPPORTS HIS CONTENTION THAT THE BANK HAD BEEN DELIBERATELY DELAYING JUSTICE ALL ALONG. HE SAID THAT SEVILLA IS A "CROOK" WHO IS CRIMINALLY CULPABLE OF OBSTRUCTING JUSTICE. ZELAYA ALSO SAID THAT SEVILLA WAS WRONG ABOUT HOW LONG IT WOULD TAKE TO BRING THE CASE BEFORE A JURY. HE SAID IT WOULD TAKE AT LEAST TWO AND ONE-HALF MONTHS, AND POSSIBLY LONGER.

6. ACCORDING TO ZELAYA, IF THE BANK (WHICH IS THE ACCUSER IN THE CASE) NOW RETURNS THE DOCUMENTS TO THE TRIAL JUDGE (AND HE POINTED OUT THAT THE BANK SHOULD HAVE RETURNED THE DOCUMENTS SOME TIME AGO), THE JUDGE WILL FORWARD THE DOCUMENTS TO EACH OF THE SIX DEFENSE ATTORNEYS IN SUCCESSION. (HE CLAIMED THAT NICARAGUA CRIMINAL PROCEDURES DO NOT PERMIT FOR SIMULTANEOUS TRANSFER OF THE DOCUMENTS TO EACH DEFENSE ATTORNEY.) EACH LAWYER MAY SPEND AS MUCH AS TEN DAYS OR SO IN PREPARING REBUTTALS TO THE ACCUSATIONS BROUGHT AGAINST HIS CLIENT. THUS, ZELAYA SAID, THIS  
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PHASE OF THE LEGAL PROCESS COULD LAST SOME SIXTY DAYS. THEN WOULD FOLLOW THE 16-DAY PERIOD OF "PRUEGAS." AFTER THAT THE JUDGE WOULD SPEND THREE OR FOUR DAYS EMPANELLING A JURY WHICH WOULD HAVE TO REVIEW ALL OF THE DOCUMENTS AND DECIDE ON THE CHARGES. IF THERE WERE ANY PROBLEM IN LINING UP JURY MEMBERS OR IN FINDING A TRIAL DATE ON THE COURT CALENDAR, MATTERS COULD BE DELAYED EVEN FURTHER. MOREOVER, ZELAYA CHARGED, SOMOZA CONTROLS WHO SERVES ON THE JURIES. ALTHOUGH HE FELT THAT AN UNBIASED JURY WOULD FIND CHARITON INNOCENT ON THE MERITS OF THE CASE, HE WAS NOT CONFIDENT THAT THIS CASE WOULD BE DECIDED ON ITS MERITS.

7. ZELAYA POINTED OUT THAT IF SOMOZA WISHED TO RESOLVE THE CHARITON CASE IN A LEGAL MANNER, HE COULD ORDER THE MASAYA COURT OF APPEALS TO ACT ON THE APPEAL WHICH ZELAYA HAD LODGED AGAINST THE ORIGINAL CHARGES LAST AUTUM. ZELAYA CONTENTS THAT ONE OF THE PRO-SOMOZA

JUDGES ON THE THREE-MAN MASAYA TRIBUNAL IS DELIBERATELY  
HOLDING UP A DECISION ON THE APPEAL, PRESUMABLY ON SOMOZA'S  
BANK'S ORDERS.

8. ZELAYA UNDERTOOK TO PROVIDE EMBASSY WITH DOCUMENTATION  
REGARDING THE LEGAL POINTS INVOLVED AND A CHRONOLOGY  
OF STEPS HE HAS TAKEN IN PRESENTING CHARITON'S LEGAL  
CASE.

9. CHARITON PHONED EMBASSY LATER ON MAY 26 TO SAY THAT  
ZELAYA HAD BRIEFED HIM ON WHAT HAD TRANSPIRED. CHARITON  
COMPLAINED BITTERLY THAT THESE LATEST DEVELOPMENTS DEMONSTRATE THAT  
THE HANDLING OF HIS CASE HAS BEEN ARBITRARY, AND THAT IF SOMOZA  
AND COMPANY HAD NOT DECIDED TO "BLACKMAIL" HIM AND SQUEEZE AS MUCH  
MONEY AS POSSIBLE OUT OF HIM, HE COULD HAVE HAD HIS DAY IN COURT  
AND BEEN FREED LONG AGO. CHARITON ASKED EMBOFF TO INFORM  
DEPARTMENT OF ALL OF THIS. EMBOFF AGREED TO DO SO.

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## Message Attributes

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